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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,715	02/02/2004	James W. Dibble	4517-4003	2279

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/770,715	DIBBLE ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-47 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-47 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 16 and 25 are objected to because of the following informalities: No periods are seen at the end of the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drummond (6,228,161).

Drummond discloses a calcium carbonate acid stabilized slurry, which has a pH of less than 6 containing water, calcium carbonate, and a weak acid (abstract). Claims 1 and 8 differ from the reference in the particular ratio of calcium carbonate to acid. However, the reference discloses that enough calcium compound is used to make a pH of less than 7, even though 6 is preferred (col. 7, lines 30-40). Therefore, it would have been obvious to make a product at within the claimed ratio to make a ph of about 6.5.

Claims 1- 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andon et al. (5,108,761).

Andon et al. disclose an acidic beverage containing calcium citrate malate . A solution is seen to have been made of the ingredients. The amounts are within the claimed range so would have given the claimed amount (col. 7, lines 20-40). Claims 1-

9 differ from the reference in that the additive is for a bread dough. However, the composition has been shown and would have been obvious to make as shown by the reference.

The particular particle size of the calcium carbonate as in claims 10 and 11 is seen to have been within the skill of the ordinary worker particularly since the product is to be dissolved in water. Therefore, it would have been obvious to use a particular size of calcium to suit the type of product made.

The method of making the calcium additive is also disclosed by Andon as in claim 12 of mixing the acid with the carbonate powder. The limitations as to amounts have been disclosed above. Nothing new is seen in the use of a mixer speed as the reference discloses the use of a magnetic stir bar, which stirs the solution until it is clear. It would have been within the skill of the ordinary worker to use more industrial type equipment for better efficiency (col. 7, lines 31-45). It is seen that the pH would have been within the claimed range as the composition has been shown. The claims do not exclude further freeze-drying the product. The further limitations of claims 13-20 have been disclosed above. Therefore, it would have been obvious to make the calcium additive as shown by Andon.

Claims 21- 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of DelValle et al. (5,260,082).

Claim 21 further requires incorporating the calcium additive into a dough and claim 25 in particular amounts. DelValle et al. disclose that it is known to incorporate a

slurry of calcium citrate into baked doughs (col. 3, lines 1-4). The particular ratios disclosed by Andon are not exactly as claimed. However, as Andon discloses a dissolved product, it would have been within the skill of the ordinary worker to further adjust the ratios. The claimed pH is disclosed by DelValle (abstract and col. 2, lines 20-50). The reference to delValle discloses that a slurry can be made. The only solids level disclosed show the amount of solids in an aqueous slurry, which makes a ratio of water to solids as being about 3:1, also as in claim 27 (col. 3, lines 14-18). Therefore, it would have been obvious to use the ratios of acids to calcium carbonate as shown by Andon, in place of the ratios of DelValle et al. because it is known to use such ratios when making a solution of these ingredients.

The further limitations of claims 22-29 have been disclosed above in Andon and are obvious for those reasons. Also, delValle discloses the use of organic acids, as in claims 22-24 (col. 2, lines 63-70). Therefore, it would have been obvious to use known organic acids in the claimed process.

Claim 30 further requires a leavening agent, claim 31 that it is yeast, claim 32 a particular pH of the dough, and claim 33 that the mixture of calcium is added in particular amounts to the flour and claim 34 that particular doughs are used. Yeast is disclosed in col. 8, lines 5-17 as in claims 31 and 32, the pH would have been within the claimed range since the pH of the calcium citrate mixture has been shown, absent a showing that a different pH would have resulted (col. 2, lines 19-40), as in a sponge, in claim 34 (col. 6, lines 40-65). Even though this calcium mixture was spray dried, a slurry could have been used as disclosed above. The particular amounts of the calcium

mixture is seen to have been added as 0.2 to 5% can be added (col. 2, lines 38-40). Therefore, it would have been obvious to add the aqueous mixture to a sponge and to use the other ingredients in the claimed amounts.

Claim 35 further requires the product of the process. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See In re Thorpe 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See Ex parte Jungfer 18 USPQ 2D 1796. Therefore, it would have been obvious to make a product as claimed.

DelValle discloses a baked bagel product as in claims 38 –39 containing elemental calcium in the claimed amount with a ph of from 3.5 to 6 (col. 2, lines 35-40, col. 9, lines 4-14). Even though the pH in a baked product is not shown, it would have been close to the claimed pH when all the other ingredients were added as the calcium citrate slurry would have lowered the pH of the composition. Other products such as bread can be made as in claim 40 (col. 12, lines 55-70). The particular amount is shown as in claim 41 (col. 12, lines 4-8). Therefore, it would have been obvious to make a baked dough as claimed.

Claims 42-47 are to fortifying a hamburger bun. However, the reference to delValle discloses a bread product. It would have been within the skill of the ordinary worker to adjust the bread recipe to that of a hamburger bun or to adjust the size of the bread to that of a bun especially as no particular ingredients are required to make a

hamburger bun. The limitations of claims 43, 44, 45, 46 have been disclosed above. Nothing is seen that any flour but patent flour has been used as in claim 47. Therefore, it would have been obvious to made a hamburger bun as claimed using the claimed calcium carbonate and citric acid mixture.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 9-8-05

HELEN PRATT
PRIMARY EXAMINER